going to be paid by the defendant. They are not and you all know it.

What does concern the Court is that there is a massive backlog of cases resulting in justice being delayed, such as in this case. It cannot be denied that certain defendants exploit this situation to the maximum. Their aim is to put off for as long as possible payment of damages which truly and reasonably should long since have been paid. It is part of the machinery of justice that cases should be settled. See **The Supreme Court Practice 1985,** Vol. 1, paragraph 34/5/2, pp. 536 and 537. In that way the machinery runs smoothly and efficiently. Yet they do not settle. On the contrary they dispute every issue thus forcing the plaintiff to proceed to trial. As a result more and more suits are entered in the trial lists and the machinery of justice becomes overburdened, bogged down and grinds towards a halt, so perpetuating the situation and its exploitation. It is a vicious circle. It is an abuse of the Court's process. The abuse has been known to carry on to and through the process of appeal. Often appeals are withdrawn at the last moment - upon hearing the rustle of the Judge's gown as the saying goes. *A fortiori* in an application such as this the Court should be satisfied that the appeal is *bona fide.* The defendant failed to satisfy me so.

Accordingly I indicated that the application would be dismissed. Thereafter upon application by Counsel for the defendant and by consent the judgment debt and interest was ordered to be paid to the plaintiff's solicitors to hold as stakeholders pending determination of appeal.

THE GOVERNMENT OF MALAYSIA

v.

DATUK HAJI KADIR MOHAMAD MASTAN AND ANOTHER CASE

HIGH COURT, TAWAU
TUAN IAN H.C. CHIN JC
[CIVIL SUIT NO. T. 73 OF 1991/T. (22) - 62 OF 1992]
19 JULY 1993

PRACTICE AND PROCEDURE: Stay of execution - Special circumstances - Whether successful appeal would be rendered nugatory - Delay and cause of delay in the hearing of the appeal - Merits in the appeal.

The plaintiff initiated two suits against the defendant for tax assessments and obtained summary judgments. Before the suits were filed and after receiving the notice of assessment the defendant objected to the quantum of assessments. The plaintiff agreed to stand over the tax pending the outcome of appeals to the Special Commissioners. However the Special Commissioners were yet to hear the appeals despite the long delay which was not due to the fault of the defendant. The defendant applied for stay pending the hearing of the appeals to the Special Commissioner.

Held:

[1] It is not disputed that s. 103(1) of the Income Tax Act 1967, provides for the assessed amount to be due and payable upon service of the relevant notice irrespective of whether there is any appeal but the Act does not have any provision curtailing or restricting the inherent jurisdiction of the Court to stay an execution. When a party wishes to exercise a right to resort to the procedures of the Court to enforce a judgment, that right is subject to the powers of the Court which included a power under its inherent jurisdiction to stay an execution subject to established judicial principles.

[2] Since there is substance in the appeal and coupled with the fact that it was no fault of the defendant that his appeal was not yet heard by the Special Commissioners, execution is stayed.

[Application allowed].

Cases referred to:

Mohamed Mustafa v. Kandasami (No. 2) [1979] 2 MLJ 126 ***(cit)***

Serangoon Garden Estate Ltd. v. Ang Keng [1953] MLJ 116 ***(cit)***

Syarikat Berpakat v. Lim Kai Kok [1983] 1 MLJ 406 ***(cit)***
Chong Woo Yit v. Government of Malaysia [1989] 2 CLJ 87 / [1989] 1 MLJ 473 ***(cit)***
Government of Malaysia v. Datuk Haji Ghani Gilong [1993] 2 CLJ 120 ***(cit)***
Hong Leong Finance Bhd. v. Hon Hoi Weng & Ors. [1987] CLJ 227 / [1987] 2 MLJ 377 ***(cit)***
Leong Poh Shee v. Ng Kat Chong [1966] 1 MLJ 86 ***(cit)***
Government of Malaysia v. Mechanical Handling Engineering (M) Sdn. Bhd. (High Court, Kuala Lumpur, Civil Suit S7-21-203-88 / Supreme Court C.A. No. 01-72 / 90) ***(not foll)***
Commonwealth of Australia v. Cook [1940] Vol. 1 AITR 551 @ 552 ***(dist)***
Deputy Federal Commissioner of Taxation v. Roma Industries Pte. Ltd. [1976] Vol. 6 ATR 54 ***(dist)***
DPC of T v. Mackay [1982] 82 ATC 4571 ***(cit)***
DCT (Vict) v. Trevaskis [1984] 15 ATR 867 ***(cit)***
DFC of T v. Brewer [1987] ATC 4560 ***(cit)***
Yamamori (Hong Kong) Ltd. v. Noel Kenneth Davidson & 3 Ors. [1992] 2 MLJ 410 ***(cit)***

Legislation referred to:
Income Tax Act 1967, ss. 33(1), 39(1)(g), 99(1), 101, 103(1)

For Government of Malaysia - Abu Samah Bin Nordin
For Datuk Haji Kadir Mohamed - Miridin Mamdin, Esq
For Jasanusa Sdn. Bhd. - Paul Kan, Esq

JUDGMENT

Ian H.C. Chin JC:

The Applications

The applications herein are for a stay of execution. Since the two applications pertain to the same legal principles they were heard together. The Suit No. T. 73 of 1991 will hereinafter be referred to as the "Mastan Case" while Suit No. T(22) - 62 of 1992 as the "Jasanusa Case". The facts of both cases are not in issue and the issue is whether the facts amount to special circumstances justifying a stay. I will first set out the history and facts of the two cases.

Facts of Case

Mastan Case

Summary judgment was obtained against the defendant on 6 April 1993 for the sum of RM286,002.24 which sum was for taxes additionally assessed to be paid for the Years of Assessment 1974, 1975 and 1976, including statutory penalties. The defendant on 13 April 1993 took out the present application for a stay and in support thereof caused to be filed,

(1) two affidavits affirmed by the defendant Datuk Haji Kadir Mohamad Mastan on 12 April 1993 and on 12 June 1993,
(2) an affidavit affirmed by Thayaparan Rasiah on 14 June 1993 and
(3) an affidavit affirmed by Vincent Chia Ka Soon affirmed on 17 June 1993.

The facts that can be gleaned from these affidavits can, after some effort, be summarised as follows. Sometime in July 1977 the plaintiff, the Government of Malaysia, served on the defendant Notices of Additional Assessments for Years of Assessment 1974, 1975 and 1976. The defendant's tax agent by a letter dated 13 July 1977 and addressed to the Director of Inland Revenue ("Director") disagreed with the additional assessments on the grounds that the money earned from the sales of timbers had been utilised for development purposes. The letter also requested a standover of the payment of the taxes additionally assessed. The agent also asked for the appeal forms (Form Q) to be sent to the defendant. The said Director replied by a letter of 8 August 1977 and maintained that the said proceeds of sales were liable to tax because the development was not carried on the land where the timber were extracted and sold but, instead, on another piece of land. He however agreed to stand over the tax because there was a case on the same issue pending before the Special Commissioners. The matter was therefore put in abeyance until 2 April 1988 when the plaintiff wrote to the tax agent of the defendant to inform them that the Special Commissioners had on 29 March 1988 decided that

> the Net proceeds' paid by the appellant to the Trust Account Fund were not outgoings and expenses wholly and exclusively incurred in the production of gross income and therefore not **deductible** under s. 33(1) of the Income Tax Act 1967, alternatively if payment of 'Net proceeds' were outgoings and expenses, **they constituted expenditure of a capital nature**.

The letter concluded with a demand for payment of the taxes. The tax agent replied by a letter dated 5 July 1988 and maintained that the taxes are not payable, giving the reason that the said decision of the Special Commissioners were on different facts and circumstances. The Form Q was again requested and it was intimidated in the letter that the defendant wish to have the issue resolved by the Special Commissioners. The said deputy director despatched to the tax

agent the Form Q by a letter of 20 July 1988. The tax agent did not submit to the Inland Revenue the Form Q until 3 April 1991. On 3 September 1991 the tax agent submitted the amended Form Q to the Director and requested the Director to forward the appeal to the Special Commissioners. On 26 September 1991 the writ herein was taken out. The writ was served on the defendant on 17 October 1991. Judgment in default of defence was entered on 5 October 1992 but was by consent set aside on 9 February 1993. The defendant advocate on 27 March 1993 wrote to ask that an earlier hearing be obtained for its appeal to the Special Commissioners. Summary judgment was entered on 6 April 1993. The plaintiff by a letter dated 7 May 1993 replied the defendant's advocate letter to say that the additional assessments will not be changed and that the appeal had not been forwarded to the Special Commissioners. Those are the facts in Mastan Case which facts, because they are strewn about and not set out in a chronological order, I had to burrow from the said affidavits and exhibits, skipping from one affidavit to three others, in order to follow the chronological order of the events and the documents, and to set them out in the orderly fashion I had done. I will now set out the facts of Jasanusa Case.

Jasanusa Case.

By two notices of assessment, both dated 4 January 1990, one in respect of the year of assessment 1984 and the other 1986, the defendant was assessed to pay, respectively, RM3,183,717.50 and RM2,492,609.85. These notices of assessment were served on the defendant but it cannot be ascertained as to when they were served. From what had been produced, it would seem that the defendant's first response was by way of a letter dated 21 September 1990. This letter was not produced but was referred to in a reply dated 15 November 1990 from the Inland Revenue Department (Inland Revenue) to the defendant's tax agents. This letter of the Inland Revenue requested from the defendant

(1) a list the vehicles, their registration numbers, chassis numbers, types, engine power, costs, dates of purchase, dates of sales, the names, identity card numbers and addresses of the purchasers and the sale prices;
(2) a letter from the Road Transport Department certifying the vehicles to have been registered in the defendant's name, and
(3) copies of the hire-purchase/leasing agreements.

The tax agent replied by a letter of 26 March 1991 supplying letters of the Forests Department, documents of the Road Transport Department and lists relating to the ownership, registration numbers, chassis numbers and engine horse-powers of some 48 vehicles.

The tax agents' said letter ended by stating:

> Since the vehicles were sold many years ago, our client could not obtain any vehicle registration card or letters from the Forestry Department or JKJR to substantiate their ownership over the rest of the vehicles. However, efforts are [being] made to obtain confirmation letters from the relevant buyers and these will be forwarded to you if any are received.
>
> Based on documents now enclosed, we shall be pleased if you could finalise our client's tax affairs for assessment years 1984 and 1986 as soon as possible.

Nothing happened after the said letter until 17 February 1992 when the defendant filed the Form Q to which the plaintiff reacted by a letter of 15 May 1992 which reads:

> We have received the Form Q. The Director General [intends] to review the assessment under s. 101 (1).
>
> You are hereby directed to furnish the following particulars in respect of your claim of capital allowances.
>
> 2.1: List of all the assets along with the date of purchase and documentary evidence of ownership.
> 2.2: The documentary evidence of use in the company.
> 2.3: In addition to the above you are hereby requested [to produce] all books of accounts to show and [confirm] the ownership.
>
> 2. Please note that in the absence of the above documentary evidence the D.G. may not amend the notice of assessment.
> 3. It is proposed to hold a follow up meeting on Monday 25 May 1992 at 10.00 a.m. in our office. The presence of the board of directors is essential.

It appears that simultaneously another letter dated 15 May 1992 was also issued by the Inland Revenue to the defendant requesting for

(1) schedule of export sale,
(2) schedule of payment of extraction fee,

(3) schedule of payment of royalty,
(4) schedule of timber purchased,
(5) schedule of timber licence utilized licence issued to outside agency/party utilized,
(6) schedule of utilization of company's timber licence,
(7) schedule of purchase of fixed assets and
(8) copies of all statements of accounts of certain banks.

The tax agents appeared to have responded to the said two letters of the plaintiff dated 28 May 1992 by a letter of 8 June 1992; here again, the letter was not produced. The tax agent followed up with another letter dated 2 September 1992 and requested an extension of time, up to 9 October 1992, to submit the information and documents requested because the documents date back to 1982 and because "certain vital information and documents from third parties" were being awaited. The plaintiff on 4 September 1992 took out the writ herein. The tax agent by another letter dated 8 October 1992 again asked for an extension of time, up to 30 November 1992, to supply the information and documents requested. The plaintiff served the writ on 6 November 1992 and obtained summary judgment on 2 March 1993. Those are the facts of the Jasanusa Case.

I will now turn to the legal principles which set the perimeter within which the facts are to be considered and which lay down the manner in which discretions are to be exercised.

III. **The Legal Principles.**

The learned Senior Federal Counsel, Abu Samah Bin Nordin, had led me through a list of authorities, reported and unreported, for which I am very grateful. I will advert to them as well as to others not referred by the parties. Though the Court has an unfettered discretion whether to grant or refuse a stay of application, the discretion must, nevertheless, be exercised on established judicial principles (see the Federal Court Case of *Mohamed Mustafa v. Kandasami (No. 2)* [1979] 2 MLJ 126; and *Serangoon Garden Estate Ltd. v. Ang Keng* [1953] MLJ 116). It will as a rule only grant a stay if there are special circumstances (see *Syarikat Berpakat v. Lim Kai Kok* [1983] 1 MLJ 406). A stay will be granted if there are special circumstances, notwithstanding that the tax is due and payable under s. 103(1) of the Income Tax Act 1967. What, then, constitute special circumstances? It is said in *Mohamed Mustafa v. Kandasami (No. 2)* case, at p. 127, that:

> One of the determining factors that calls for consideration is whether by not making an order of stay of the execution it would make the appeal if successful, nugatory in that it would deprive an appellant of the results of the appeal. How pertinent that factor would be may vary according to the circumstances of each particular case.

Therefore, whether a successful appeal to the Special Commissioners would be rendered nugatory by a refusal to stay execution, is a relevant consideration. Another relevant consideration is the delay and the cause of the delay in the hearing of the appeal of the taxpayer to the Special Commissioners. See *Chong Woo Yit v. Government of Malaysia* [1989] 1 MLJ 473 and *Government of Malaysia v. Datuk Haji Ghani Gilong* [1993] 2 CLJ 120. Merits in the appeal is also a relevant consideration and support for this proposition can be found in the following passage in the case of *Serangoon Garden Estate Ltd. v. Ang Keng* [1953] MLJ 116, *viz*:

> If, for example, another ground had been that there were merits in the appeal, that fact coupled with the fact that the defendant, if successful, could not be restored to its original position might well have afforded special circumstances to justify the learned District Judge in exercising his discretion to grant a stay; ...

The case of *Hong Leong Finance Bhd. v. Hon Hoi Weng & Ors.* [1987] 2 MLJ 377 also supports the proposition and in fact, V.C. George J. in that case was of the opinion that where summary judgment, as distinct from a judgment after a full trial, was obtained and there was every probability that the appeal against the summary judgment would be successful, a stay of execution should be granted. The learned Judge went further; he, after referring to, *inter alia, Syarikat Berpakat* Case, said the rule regarding special circumstances should be qualified this way:

> Where a judgment is entered after a full trial of the issues (or in the case of an appeal, after a full hearing thereof) the general rule is that stay of execution pending appeal (or where it applies, further appeal) will not be granted unless there are special circumstances.

I respectfully agree with those views of the learned V.C. George J. An attempt was made to define special circumstances by Raja Azlan

Shah J. (as His Majesty then was) in the case of *Leong Poh Shee v. Ng Kat Chong* [1966] l MLJ 86, *viz:*

> Special circumstances, as the phrase implies, must be special under the circumstances as distinguished from ordinary circumstances. It must be something exceptional in character, something that exceeds or excels in some way that which is usual or common.

The definition only serves to emphasise the fact that there are myriad circumstances that could constitute special circumstances with each case depending on its own facts. I am of the opinion that the list of factors constituting special circumstances is infinite and could grow with time. Any attempt to limit the list or close a category would be to impose a fetter on the exercise of the discretion of the Court whether to grant or stay an execution; making the discretion less of a discretion. This is surely not what discretion is all about. As long as one does not stray beyond the perimeter set by the judicial principles, the discretion can be exercised. I should, finally, refer to the unreported case of *Government of Malaysia v. Mechanical Handling Engineering (M) Sdn. Bhd.* (High Court, Kuala Lumpur, C.S. S7-21-203/88; Supreme Court C.A. No. 01-72/90), a decision of the learned Lim Beng Choon J., cited by the learned Senior Federal Counsel, and where a stay of execution was refused. It was remarked or it was a finding of the learned Judge in that case that:

(1) the appeal was on tenuous ground;
(2) the particulars requested by the Inland Revenue were supplied as and when the defendant chose to do so;
(3) the evidence show the defendant was able to pay: and
(4) the defendant was trying to transfer away assets.

The facts of that case are different from the facts of the cases here. *Mohamed Mustafa v. Kandasami* (No. 2) case is not referred there. The passage, cited by the learned Judge, of the Australian cases of *Commonwealth of Australia v. Cook* [1940] Vol. 1 AITR 551 @ 552, dealt with the right to enter judgment, not with a stay of execution. As for the passage of *Deputy Federal Commissioner of Taxation v. Roma Industries Pte. Ltd.* [1976] Vol. 6 ATR 54, which was also cited by the learned Judge, it dealt with the right to a winding up order of a company whose debt is subject to appeal. Those passages, which were from cases not dealing with a stay of execution, should not be used to support the opinion of the learned Judge that the Court had limited power to stay an execution. It is not disputed that s. 103(1) of the Income Tax Act 1967, provides for the assessed amount to be due and payable upon service of the relevant notice irrespective of whether there is any appeal but the Act does not have any provision curtailing or restricting the inherent jurisdiction of the Court to stay an execution. When a party wishes to exercise a right to resort to the procedures of the Court to enforce a judgment, that right is subject to the powers of the Court which included a power under its inherent jurisdiction to stay an execution subject to established judicial principles. Therefore, if the *Government of Malaysia v. Mechanical Handling Engineering (M) Sdn. Bhd.* Case, should decide that primacy should be given to the fact that the assessed tax must be paid irrespective of any appeal, then I respectfully disagreed. If it is a policy of the Income Tax Act 1967, that the assessed tax ought to be paid first before the hearing of the appeal, than that policy is only one of the factors to be considered but it cannot have primacy of consideration and will have to give way to cases where the appeal was not heard through no fault of the taxpayer, like in the cases of *Chong Woo Yit v. Government of Malaysia* and *Government of Malaysia v. Datuk Haji Ghani Gilong*, cited *supra*. Anyway, a passage at p. 4575, in the case of *DFC of T v. Mackay* [1982] 82 ATC 4571, which was also cited by the learned Judge would appear to dispel any notion of primacy to be given to the policy of the Act to have the tax collected first as the passage speaks of two clear instances where the Court had exercised its discretion to stay and they were, where there had been an abuse of position and where there was extreme personal hardship. Aside from that, various other Australian authorities cited by the learned Judge support the principle that the merits of the appeal is a factor to be considered. See *DFC of T v. Mackay* case, cited *supra*; *DCT. (Vic) v. Trevaskis* [1984] 15 ATR 867 and *DFC of T v. Brewer* [1987] ATC 4560, which are all in line with *Mohamed Mustafa v. Kandasami* (No. 2) case.

Matter of this nature involves, *inter alia*, balancing the need of the government to realise the taxes and the need of the taxpayer to be protected against arbitrary or incorrect assessments. The Court should be ever vigilant against

taxpayer who may use the procedure of the Court, like applying for a stay of execution, to defer or postpone payment of his just dues or to abscond by migration or to dissipate the assets to defeat the judgment. The Court should also bear in mind the possibility of arbitrary or incorrect assessments brought about by fallible officers who have to fulfill the collection of a certain publicly declared targeted amount of taxes and whose assessments, as a result, may be influenced by the target to be achieved rather than the correctness of the assessment. It should not be much of a difficulty for the Court to see the genuineness of an appeal or the willingness of the taxpayer to comply with all reasonable requests of the Director, if they exist, and thus move the Court to stay the execution. Having so apprised myself of the legal principles, I will now apply them to the facts and deliver my decisions.

IV. *Conclusions*

It is common ground that despite s. 99(1) of the Income Tax Act 1976, the Form Q, in so far as Sabah is concerned, is never filed within the time stipulated by the said section but is filed only after the Inland Revenue has distributed the Form Q and after an agreement cannot be reached between the taxpayer and the Inland Revenue as regards the amount of the tax payable. The apparent lateness in both cases in the filing of the Form Q is not to be an issue in that no advantage will be taken of s. 99(1) of the Income Tax Act 1967; this, the learned Senior Federal Counsel had conceded.

In Mastan Case, the assessments were disputed as far back as 13 July 1977 after the service of the notices of additional assessments on the defendant in July 1977. The taxes were, with the consent of the plaintiff, stood over to await the decision, which was then pending, of the Special Commissioners in another case. The decision of that case was given almost eleven years later on 29 March 1988. The plaintiff thereafter on 2 April 1988 demanded payment of the tax to which the defendant, by a letter dated 5 July 1988, still maintained that the taxes were not payable and asked for the Form Q to enable him to formally lodge the appeal. The Form Q was despatched to the tax agent on 20 July 1988 but it was not till 3 April 1991 that the defendant lodged the Form Q, followed with further amended Form Q on 3 September 1991 coupled with a request that the Form Q be forwarded to the Special Commissioners. Up to that time, the plaintiff took no steps to recover the assessed tax. Instead of forwarding the appeal to the Special Commissioners, the plaintiff on 17 October 1991 took out the writ and on 6 April 1993 obtained summary judgment. The defendant, as regards the additional assessments, maintained that the sums, which were termed "nett proceeds", "should be an allowable deduction as it was expenditure incurred wholly and exclusively in producing the gross income and/or it is an expenditure allowable under s. 39(1)(g) of the Income Tax Act 1967". I am unable to agree with the learned Senior Federal Counsel that the defendant's only contention is that the mere filing of the appeal amounted to special circumstances. Mirdin Mamdin, Esq., learned Counsel for the defendant orally submitted and contended, which is the proper thing to do, rather than in the affidavit of the defendant (see *Yamamori (Hong Kong) Ltd. v. Noel Kenneth Davidson & 3 Ors.* [1992] 2 MLJ 410), that the facts disclosed by the affidavit disclosed special circumstances and in particular that there was no fault on the part of the defendant that his appeal was still not heard by the Special Commissioners. The learned Counsel also submitted that the appeal will be of "no efficacy" if a stay is not granted. Was the defendant at fault in his appeal to the Special Commissioners not being heard todate? As for the period between 1977 and July 1988, the defendant was clearly not at fault because the tax was stood over and the Form Q requested by him was not then forwarded to him because of an appeal in another case which, according to the plaintiff, had a bearing on the present case. What then of the period between July 1988, when the tax agent of the defendant had received the Form Q, and just before April 1991, when the defendant submitted the Form Q? Here, there was an unexplained delay on the part of the defendant of about 21 months in submitting the Form Q. But between the time the Form Q were lodged in April 1991 and June 1993, the Form Q, for a period of more than 25 months have still not been forwarded by the plaintiff to the Special Commissioners and the reason appears in the said letter of the Inland Revenue dated 7 May 1993, which is that the Director is not going to review the assessment and hence the appeal is not sent to the Special Commissioners. Therefore, whatever the fault of the defendant in not returning the Form Q until April 1991, he has not, subsequent

thereto, contributed to the fault in not having his appeal forwarded from April 1991 until now, which delay, is the immediate delay which the Court is concerned with and bearing in mind that the plaintiff does not insist on strict compliance with s. 99(1) of the Income Tax Act 1967. Since it was not argued by the learned Senior Federal Counsel that the appeal is frivolous, I therefore assume that there is substance in the appeal. Since there is substance in the appeal and coupled with the fact that it was no fault of the defendant that his appeal was not yet heard by the Special Commissioners, I grant the order of stay of execution. But what if the Director continues to refuse to submit the appeal to the Special Commissioners? In such an event, the Court, in order not to prejudge the issue of whether the plaintiff was right in not forwarding the appeal to the Special Commissioners, expects the defendant to initiate the appropriate legal action to have the dispute, as to whether the appeal is fit to be submitted to the Special Commissioners, adjudicated. For the purpose, the stay of execution is to last six months from the date hereof and will only be extended if I am satisfied on the adjourned date of hearing, upon affidavit evidence to be filed by the defendant, that, in the event of the Director continuing to refuse to refer his appeal to the Special Commissioners, he had taken the necessary legal action to have that dispute adjudicated. The dispute regarding the tax is a simple question of law which I have earlier referred to. There is no reason why that dispute cannot be resolved with the minimum of time; if it cannot, the fault lies with the system and the defendant should not be punished for it. The summons herein is therefore adjourned to 10 January 1994, at 9.00 a.m. for the purpose of determining whether the stay of execution should be extended. I will now turn to Jasanusa Case.

In Jasanusa Case, the events spanned a shorter period instead of the 16 years in Mastan Case. The notices of assessments were issued in January 1990 and were in respect of years of assessment 1984 and 1986. There was exchange of letters between the plaintiff and the defendant regarding the taxes. The defendant endeavoured to fulfill the requests of the plaintiff for information and documents. The defendant filed the Form Q in February 1992 and the plaintiff reacted by a letter of 15 May 1992, saying that the Director intends to review the assessment under s. 101 of the Income Tax Act 1967 and asks for particulars of everything that the defendant owned and proof of use and of ownership. Given the masses of information and documents required, quite naturally the defendant, on two occasions asked for time up to 30 November 1992 for compliance. Instead of acceding to the request for time the plaintiff took out the writ herein and obtained summary judgment on 2 March 1993; at which time the Director still has not changed his stated intention to review the assessment which he indicated in his letter of 15 May 1992. Quite a substantial amount of information, in the form of documents certifying the ownership, registration number and capacity of the vehicles, have todate already been supplied by the defendant to the plaintiff. If the Director is not happy with what he had been supplied and is not agreeable to extending the time for the defendant to supply the information and documents, he should write to the defendant to inform the defendant that he has changed his mind about reviewing the assessment; this was not done despite the intimidation by the defendant, in the said letter of 26 March 1991, that the defendant's case for review rests with whatever information and documents the defendant had by that date supplied. The defendant is still holding on to the hope of a review held out by the said letter of the Director which obviates the necessity of an appeal. Therefore, that the appeal of the defendant is still not heard is not the fault of the defendant. I therefore also grant a stay of execution. But in this case, the stay will be for a period of six months and will only be extended if I am satisfied, on the adjourned date of hearing of the summons herein, upon affidavit evidence to be filed by the defendant, that the defendant had done all that it can in complying with all the reasonable requests of the Director for information and documents or that the defendant had unequivocally stated that they will rely only on whatever information and documents they had already supplied for the purpose of their appeal to the Special Commissioners. The evidence shows that the defendant is prepared (despite the said intimidation that it is prepared to rest its case on whatever already supplied) but has yet to supply certain information and documents which may result in a review of the assessments. In order not, by the order of stay, to encourage indolence on the part of the defendant in supplying further information and documents nor to provide the

defendant with an indefinite legal shield to defer payment and, also, in order to assure myself that the defendant, after the grant of the stay, has made all reasonably efforts to comply with the requests of the Director or, at least, has hereafter stated unequivocally that it will not rely on any other documents for its case for a review or appeal, a hearing, sit six months from now, will be had to determine whether a stay by then is still justified. The summons herein is therefore adjourned to 10 January 1994, at 9.00 a.m., for the purpose of determining whether the stay of execution should be extended. The parties are at liberty to file further affidavits for the purpose of the adjourned hearing.

Costs of the applications are awarded to the two defendants.